IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10639 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARVINDARSING @ PAMMI@ PARVINSING GURUDAYALSING JAT
Versus
COMMISSIONER OF POLICE BARODA AND ORS

Appearance:
MS KRISHNA U MISHRA for Petitioner
MR KT MEHTA, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda, passd an order on October 17, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Parvindarsing @ Pammi

Parvinsing Gurudayalsing Jat under the provisions of the said Act.

2. The detaining authority took into consideration two registered offences against the detenu and statements of three anonymous witnesses in respect of whom privilege under Section 9(2) of the PASA Act was exercised by the detaining authority. The detaining authority considered the detenu to be a dangerous person whose activities were found by the detaining authority to be detrimental to public order. The detaining authority, therefore, obsreved that detention of the detenu under the PASA Act is the only efficacious remedy that can be resorted to in order to immediately prevent the petitioner from pursuing his illegal activities.

3. The petitioner/detenu challenges the order of detention on various counts. However, Ms. Mishra, learned advocate for the petitioner, has restricted her arguments to the ground of delay in passing the order. She submitted that the statements of anonymous witnesses were recorded on September 9, 10 and 14 of 1999 and the order came to be passed on October 17, 1999 and, therefore, there is a delay in passing the order. The delay is not explained. The delay, having remained unexplained, would vitiate the genuineness of the satisfaction recorded by the detaining authority for the need for exercise of these powers. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. It is clear, on perusal of the record that the statements of anonymous witnesses were recorded on September 9, 10 and 14, 1999. The said statements were verified by the detaining authority on September 17, 1999 and the order was passed on October 17, 1999. Even if the date of verification is considered, the order is passed after a lapse of about one month. This unexplained lapse/delay in passing the order will have a direct bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the PASA Act. The authority has observed in the grounds of detention that the petitioner is required to be detained under the PASA Act for immediately preventing him from pursuing his activities which are detrimental to public order. The outcome is that the order is passed on a subjective satisfaction which cannot be said to be genuine, but only verbal. If the satisfaction was genuine, there would not

have been so much of delay in passing the order and in absence of any explanation coming from the detaining authority by way of an affidavit or otherwise, no concession can be given for the delay. The delay has vitiated the order of detention and, therefore, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated October 17, 1999 passed against the detenu is hereby quashed. The detenu-Parvindarsing @ Pammi @ Parvinsing Gurudayalsing Jat is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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